

**Chapter 9.08****SMOKING PROHIBITED**

(2819-3/86, 3202-9/93, 3385-3/98)

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**9.08.010 Purpose and findings.** (2819-3/86) The City Council finds there is ample evidence that smoking tobacco in any form is a real danger to the general health and an irritation, inconvenience, and discomfort to persons in enclosed areas. In order to serve the public health, safety and welfare, the declared purpose of this chapter is to promote a policy of nonsmoking and to regulate smoking in any building or establishment frequented by the public, to the extent allowed by state law. (2819-3/86, 3385-3/98)

**9.08.020 Definitions.** Words and phrases used in this chapter shall have the following meanings unless from the context a different meaning is apparent: (2819-3/86)

- (a) "Employee" shall mean any person who performs a service under any appointment or contract of hire or apprenticeship, express or implied, oral or written excepting persons excluded by California Labor Code section 3352. (2819-3/86)
- (b) "Employer" shall mean any person, partnership, or corporation (including private, nonprofit and governmental) having not fewer than four persons performing services and receiving compensation therefor. (2819-3/86)
- (c) "Places of employment" shall mean any building, structure, or portion thereof, under the control of a private or public employer, where employees are present to perform a service, and members of the public may come to be served. (2819-3/86)
- (d) "Smoking" shall mean and include inhaling, exhaling, burning, or carrying any lighted smoking equipment for tobacco, or any other noxious weed or plant. (2819-3/86)

**9.08.030 Elevators--Smoking prohibited.** No person shall smoke in any elevator in any building open to the public including, but not restricted to, elevators in office, hotel, and multifamily buildings. (2819-3/86)

**9.08.040 Hospitals and health care facilities--Smoking prohibited.** (2819-3/86) *This section will become effective only upon 1) the repeal or invalidation of California Labor Code section 6404.5; or 2) legislative modification to California Labor Code section 6404.5 such that local agencies may regulate smoking in places of employment.* (3385-3/98)

- (a) No person shall smoke in any area, except those designated and posted for such purpose, of any hospital and health care facility, as defined in California Health and Safety Code section 1250. (2819-3/86)
- (b) Every publicly or privately-owned hospital and health care facility shall assign patients rooms or wards, according to individual preference, and no nonsmoking patient shall be placed in a room or ward which has been designated for patients who smoke. (2819-3/86)

**9.08.050 Meeting rooms--Smoking prohibited.** (2819-3/86) *This section will become effective only upon 1) the repeal or invalidation of California Labor Code section 6404.5; or 2) legislative modification to California Labor Code section 6404.5 such that local agencies may regulate smoking in places of employment.* (3385-3/98)

No person shall smoke in any hearing room, conference room, chamber or any place where public business is conducted, and to which members of the public are admitted, whether as participants or observers. (2819-3/86)

**9.08.060 Theaters and auditoriums--Smoking prohibited.** (2819-3/86) *This section will become effective only upon 1) the repeal or invalidation of California Labor Code section 6404.5; or 2) legislative modification to California Labor Code section 6404.5 such that local agencies may regulate smoking in places of employment.* (3385-3/98)

No person shall smoke in any publicly or privately-owned theater, auditorium or similar facility, designed and used for motion picture shows and stage productions, including but not restricted to musicals, concerts, recitals, operas, and sporting events, except the lobby, and business or work areas barred to the public. Every person who owns, manages, or has control of a theater, auditorium, or facility used for the purposes stated herein, shall post signs conspicuously in the lobby informing the public that smoking is not permitted inside such theater, auditorium, or facility. In the case of motion picture theaters, such information shall be displayed on the screen for not less than five (5) seconds before the beginning of the feature film. (2819-3/86)

**9.08.070 Public restrooms--Smoking prohibited.** No person shall smoke in any public restroom. (2819-3/86)

**9.08.080 Eating establishments--Smoking prohibited.** (2819-3/86, 3202-9/93) *This section will become effective only upon 1) the repeal or invalidation of California Labor Code section 6404.5; or 2) legislative modification to California Labor Code section 6404.5 such that local agencies may regulate smoking in places of employment.* (3385-3/98)

- (a) Any person owning, managing, operating or having control of an eating establishment or restaurant which has an approved occupant load of twenty-five (25) persons or more shall provide and maintain a nonsmoking section of not less than seventy-five percent (75%) of the enclosed area for seating patrons which is not part of a patio, outdoor eating area, or that portion of the premises used primarily for the sale of alcoholic beverages. The requirements of this section shall not apply to any room or rooms in a restaurant or eating establishment which may be reserved for private functions. The nonsmoking section referred to herein shall be increased to one hundred percent (100%) of the aforesaid enclosed area on January 1, 1995. (2819-3/86, 3202-9/93)
- (b) Any person owning, managing, operating, or having control of an eating establishment or restaurant which has an approved occupant load of twenty-four (24) persons or less shall provide and maintain a nonsmoking section of not less than one hundred percent (100%) of the enclosed area for seating patrons which is not part of a patio, outdoor eating area, or that portion of the premises used primarily for the sale of alcoholic beverages. The requirements of this section shall not apply to any room or rooms in a restaurant or eating establishment which may be reserved for private functions. (3202-9/93)

**9.08.090 Employer compliance.** (2819-3/86) *This section will become effective only upon 1) the repeal or invalidation of California Labor Code section 6404.5; or 2) legislative modification to California Labor Code section 6404.5 such that local agencies may regulate smoking in places of employment.* (3385-3/98)

As evidence of good faith compliance, an employer with four (4) or more employees, shall meet the following criteria: (2819-3/86)

- (a) Within 120 days after the effective date of this chapter, an employer shall adopt, implement and maintain a no smoking policy, containing a definition of "immediate work area," which insofar as practicable, shall make reasonable provisions for nonsmokers and smokers. Such policy shall be posted in appropriate locations throughout the work place, and copies thereof furnished to all employees. (2819-3/86)
- (b) An employee may request, based on the employer's policy, that his or her immediate work area be designated nonsmoking. Nonsmokers shall be given preference, and may lodge a complaint with the employer with respect to pollution by tobacco smoke of his or her immediate work area. The employer shall, using existing ventilation, walls, temporary separations and partitions, make every effort to resolve any problem between nonsmoking and smoking employees. (2819-3/86)
- (c) If an employer finds that the floor plan for a business does not provide sufficient relief for nonsmoking employees, he may, when practicable, reassign such nonsmokers to other locations, enlarge the area in which smoking is prohibited, or take any other reasonable measure to eliminate or reduce the effect of tobacco smoke on nonsmokers. (2819-3/86)

**9.08.100 Exceptions.** The provisions of this chapter shall not apply to any business conducted from a private home, or any private work area occupied exclusively by persons who smoke, except where smoking has been prohibited by the fire marshal pursuant to statute, ordinance or other regulations. (2819-3/86)

**9.08.110 Sign requirement.** Whenever, under the provisions of this chapter, the posting of a sign is required, the owner, manager or other person in charge or control of a building, room, or other place where smoking is prohibited, shall place or cause to be placed conspicuous "NO SMOKING" signs with capital letters not less than one inch in height on a contrasting background. (2819-3/86)

**9.08.120 Structural modification not required.** (2819-3/86)

- (a) All employers shall to the extent possible provide no-smoking areas for nonsmoking personnel, but shall not be required to incur any expense to make alterations or modifications to an existing structure. (2819-3/86)
- (b) No owner, operator, or manager of any theater, hospital, health care facility, business, building, or structure shall be required to incur any expense to alter or modify an existing area or work place for the benefit of nonsmokers. (2819-3/86)

**9.08.130 Prohibitions.** (2819-3/86) *This section will become effective only upon 1) the repeal or invalidation of California Labor Code section 6404.5; or 2) legislative modification to California Labor Code section 6404.5 such that local agencies may regulate smoking in places of employment.* (3385-3/98)

- (a) No employer, owner, operator, manager, or person in charge or control of any place of business, hospital or health care facility, or theater or place of entertainment shall fail to establish and post a written smoking policy on the premises, or fail to place conspicuous "no smoking" signs in appropriate areas, and insofar as practicable, shall fail to comply with the requirements of this chapter. (2819-3/86)

(b) It shall be unlawful for any person willfully to destroy or mutilate any sign which prohibits smoking. (2819-3/86)

(c) It shall be unlawful for any person to smoke in any posted nonsmoking area. (2819-3/86)

**9.08.140 Violation--Penalty.** (2819-3/86) *This section will become effective only upon 1) the repeal or invalidation of California Labor Code section 6404.5; or 2) legislative modification to California Labor Code section 6404.5 such that local agencies may regulate smoking in places of employment.* (3385-3/98)

Any person who violates or willfully fails to comply with any provision of this chapter shall be guilty of an INFRACTION, and upon conviction thereof shall be subject to the following:  
(2819-3/86)

(a) For the first offense, a fine not to exceed fifty dollars (\$50); (2819-3/86)

(b) For the second offense, occurring ninety (90) days after the first offense, a fine not to exceed one hundred dollars (\$100); (2819-3/86)

(c) For the third offense, occurring ninety (90) days after the second offense, a fine not to exceed one hundred dollars (\$100); (2819-3/86)

(d) Thereafter a fine not to exceed two hundred fifty dollars (\$250) shall be paid each day, or portion thereof, during which an offense occurs. (2819-3/86)

**9.08.150 Public nuisance--Civil remedy.** Any violation of the provisions of this chapter may be declared a public nuisance hereunder, and the City Attorney may proceed to abate the same by filing a civil action in a court of competent jurisdiction. (2819-3/86)

**9.08.160 Tobacco vending machines prohibited.** No cigarette or other tobacco product may be sold, offered for sale, or distributed by or from a vending machine or other appliance, or any other device designated or used for vending purposes. (3202-9/93)